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National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

January 30, 2016

## FOIA REQUEST

### Fee waiver requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of records from the Environmental Protection Agency concerning the administration of President Trump and/or his representatives and the proposed border wall between the U.S. and Mexico.

U.S. Department of the Interior

#### I. Request

This request concerns non-exempt responsive records compiled or received by the Environmental Protection Agency concerning the possible construction of a wall, or reconstruction of an existing wall.

The President issued Executive Order 13767 on January 25, 2017 and ordered Federal agencies to begin securing the US-Mexico border (i.e. work on building a wall on the USA-Mexico border) (hereafter collectively referred to as "The Wall Project," "The Wall," or "TWP."

I request copies of records, including but not limited to reports, emails, letters, memoranda, and summaries,

1) which are requests for assistance from the White House (Executive Office of the President, Domestic Policy Staff, Office of Management and Budget) or any Federal agency, as that term is defined in 5 USC Section 551) in providing information on TWP.

2) which are responses from the Environmental Protection Agency to any Federal agency Requests, in the form of records, from other Federal agencies concerning TWP.

3) which provide estimates of the costs and/or distance of the border wall. of construction or reconstruction of The Wall;

4) which discuss the environmental implications of building or reconstructing The Wall;

5) which discuss potential legal and/or regulatory obstacles to building The Wall;

6) which discuss Treaties with the United Mexican States (hereafter "Mexico") and impact of building The Wall on any of these Treaties.



7) which discuss the U.S.-Mexico Binational Commission (<https://www.state.gov/p/wha/ci/mx/c10787.htm>) a forum, according the U.S. Department of State website that allows" for regular exchanges at the cabinet-level on a wide range of issues critical to U.S.-Mexico relations";

8) which discuss the design, construction, reconstruction, cost of The Wall

9) which discuss the REAL ID Act and/or Homeland Security

10) which discuss potential consequences and/or benefits of building/not building the wall

## **II. Time Frame of this Request**

The time frame for records sought by this FOIA request is from November 8, 2016 to the day the FOIA if fully processed and completed.

## **III. How Responsive Records Should Be Provided**

I request copies of responsive records for this FOIA request be provided in a digital format, either via email, or stored on a CD or other electronic data storage device. See 5 U.S.C. § 552 (a)(3)B). Providing these records in an electronic format will save agency staff processing time, as well as reducing the cost of making paper copies of all responsive records.

## **IV. Background on Daniel DeFraia, requester**

I am a journalist and I have about seven years experiencing writing and publishing articles with GlobalPost, the Committee to Protect Journalists, the Sunlight Foundation, and other news outlets, and therefore have a reasonable expectation of publication.

I am also a PhD student at Boston University and the documents produced in response to this request will be useful in my academic work, which involves teaching journalists about the investigatory skills and tools journalists need. I will be using the documents in my academic work.

The information requested is in the public interest. The proposed wall may cost taxpayers billions of dollars and therefore the public has a clear interest in knowing how work is to be carried out. I have experience with the process of making FOIA request. I am currently a plaintiff in a FOIA case where the government refused to release records to me and since filing suit, the government began producing records. I hope I don't have to do this again.

## **V. Background on the Public Interest Served by this Request**

President Trump, who spoke out repeatedly on the subject, pledged in his presidential campaign, in June 2015, according to CBS News, and said, "I will build a great wall -- and nobody builds walls better than me, believe me -- and I'll build them very inexpensively. I will build a great, great wall on our southern border, and I will make Mexico pay for that wall. Mark my words." see <http://www.cbsnews.com/pictures/wild-donald-trump-quotes/14/>

This project, depending upon size, could cost \$15 to \$25 billion, according to CNBC, [www.cnbc.com/2015/10/09/this-is-what-trumps-border-wall-could-cost-us.html](http://www.cnbc.com/2015/10/09/this-is-what-trumps-border-wall-could-cost-us.html)

Clearly, the Wall is a major national and international issue and it has many dimensions related to the narrow questions that might be answered by this request. I intend to use the records, in response to this Request, to provide information to the American public and leaders about the aspects of The Wall and its impact. I anticipate that the results of the examination of the records, as distilled by journalist work, to be



widely available. I will also make the data available to entities like the Sierra Club, the National Parks Conservation Association, and other organizations.

## **VII. Waiver of Duplication and Search Fees**

As an accomplished journalist, I have the ability, based upon my experience, to digest, understand, synthesize and understand the responsive records I seek. I have active plans and the ability to disseminate the records I receive. As the FOIA requester, the government should know that I expect to use the requested records to write for publication and that my work will be used.

I seek a waiver of all duplication and search fees. In the event that my fee waiver is denied, please email immediately on the anticipated costs for duplication and search fees.

As is unfortunately common, Federal agencies do not always meet with statutory duties. As it applies to this request, when the 20 working days expires from your receipt of this request, please confirm in writing that you are aware that you cannot charge processing fees. The government has failed to release responsive records within the time allowed by law. Please note that you cannot charge me for processing fees. Please see two DC District cases, *Bensman v. National Park Service*, 806 F. Supp. 2d 31 (DCD 2011), and *Stein v. U.S. Department of Justice*, (Case No. 13-cv-571-TSC DCD July 18, 2016).

## **VIII. Policy and Legal Direction for Open Government**

In addition, the disclosure of the above referenced agency records are also sought in order to promote government transparency, and to reflect the congressional policy to support our nation's fundamental commitment to open government, and a presumption of disclosure.

As the Supreme Court has observed, "virtually every document generated by an agency is available in one form or another, unless it falls within one of the Act's nine exemptions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975). FOIA was designed to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny," see, e.g., *Dept. of the Air Force v. Rose*, 425 U.S. 352, 361 (1976), and in order "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); see also *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *United States Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

The above described agency records are subject to disclosure under FOIA, and are not otherwise exempt from disclosure pursuant to FOIA's nine statutory exemptions. See 5 U.S.C. § 552(b)(1) - (9). To the extent that a determination is made by your FOIA office staff that any limited portions of the records listed above will be withheld from disclosure for this request, FOIA expressly requires all agencies to disclose "[a]ny reasonably segregable portion of a record . . . after deletion of the portions of the record which are exempt." 5 U.S.C. § 552(b). See, e.g., *Oglesby v. U.S. Dept. of Army*, 79 F.3d 1172, 1178 (D.C. Cir. 1996); see also *Abdelfattah v. U.S. Dept. Of Homeland Security*, 488 F.3d 178, 186-187 (3rd Cir). The 2007 Openness Promotes Effectiveness in our National Government Act amendments to FOIA (the "OPEN Government Act") requires identification of the amount of any material withheld, the location of any withholdings, a direct reference to the specific statutory exemption supporting each withholding asserted, and if technically possible, also require that this information shall "be indicated at the place in the record where such deletion is made." See 5 U.S.C. § 552(b). Therefore, I would appreciate your assistance in expressly identifying any exempt responsive records (or portions thereof) and the applicable FOIA exemptions for any responsive materials withheld for this FOIA request.

Please inform me if there are any "unusual circumstances" that will cause delay in responding to this FOIA request, or providing the records which are requested, and in addition, please provide the approximate date that you anticipate a final response will be provided.

## **IX. Estimated Date of Completion**

The Freedom of Information Act at Title 5 United States Code Section 552 (a)(7)(B)(ii) requires that agencies provide "an estimated date on which the agency will complete action on the request." Please provide me with an estimate as soon possible. This is a continuing demand.

Sincerely,

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